

COTTONWOOD HEIGHTS

RESOLUTION NO. 2008-34

A RESOLUTION APPROVING A RENEWAL OF A SOFTWARE LICENSE AND SERVICES AGREEMENT WITH VERITE, INC.

WHEREAS, the city council (the "*Council*") of the city of Cottonwood Heights (the "*City*") met in regular session on 13 June 2008 to consider, among other things, approving a renewal of a "Software License and Services Agreement" (the "*Agreement*") with Verite, Inc. ("*Verite*") whereunder Verite would provide, among other things, website services and licensing to the City as specified in the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve the City's entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the Cottonwood Heights city council that the attached Agreement is hereby approved, and that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

This Resolution, assigned no. 2008-34, shall take effect immediately upon passage.

PASSED AND APPROVED effective 13 June 2008.

COTTONWOOD HEIGHTS CITY COUNCIL

By


Kelvyn H. Cullimore, Jr., Mayor




Linda W. Dunlavy, Recorder

VOTING:

Kelvyn H. Cullimore, Jr.
Gordon M. Thomas
J. Scott Bracken
Don J. Antczak
Bruce T. Jones

Yea ☒ Nay ☐
Yea ☒ Nay ☐
Yea ☒ Nay ☐
Yea ☒ Nay ☐
Yea ☒ Nay ☐

DEPOSITED in th office of the City Recorder this 13th day of May 2008.

RECORDED this 14 day of May 2008.

WST/CH/505108.1



SOFTWARE LICENSE AND SERVICES AGREEMENT

This Software License and Services Agreement (the "Agreement") is entered into as of June 1, 2008 – May 31, 2009 ("Effective Date") between Verite, Inc., which has its corporate offices at 608 W 9320 S, Sandy, Utah 84070 ("Verite") and city of Cottonwood Heights, having a place of business at 1265 E. Fort Union Blvd. # 250 Cottonwood Heights, UT 84047 ("Customer").

In consideration of the mutual promises and upon the terms and conditions set forth below, the parties agree as follows:

1. DEFINITIONS.

1.1 "Intellectual Property Rights" are patent rights (including patent applications and disclosures), copyrights, trade secrets, know-how and any other intellectual property rights recognized in any country or jurisdiction in the world.

1.2 "Services" are the Verite hosting services, training services, support services, and other consulting services, provided by Verite to Customer under this Agreement

1.3 "Verite System" is Verite's Internet-based system for managing online content, as more fully described in Exhibit A to this Agreement.

2. SERVICES PROVIDED BY VERITE

2.1 **Event Management Services.** During the term of this Agreement and subject to Customer's performance of its obligations hereunder, Verite will maintain the Verite System and allow Customer to access the Verite System via the Internet for use as licensed hereunder. Verite reserves the right at any time to revise or modify the functionality, specifications, and/or capabilities of the Verite System, provided that the minimum specifications described in Exhibit A remain available.

2.2 **Maintenance and Customer Support.** Verite will provide periodic software releases, which typically include feature upgrades to existing Verite System functionality and/or product repairs at no extra charge. Significant feature upgrades or new functionality will be offered at additional charges, except to the extent such new features are offered generally to Verite's other customers at no charge. Verite will provide standard technical support services to assist in use of the Verite System pursuant to the terms of Exhibit B. To utilize such services, Customer must have paid any current amounts due Verite under this Agreement including amounts due, if any, for Verite's maintenance and support services per Exhibit A.

2.3 **Exclusions to Support Services.** Verite will have no obligation to provide support services to correct problems in the operation or performance of the Verite System caused by Customer's failure to properly maintain its equipment that is used to interface to the Verite System. If such problems are identified, then to the extent authorized by Customer, Verite will provide consulting services to assist Customer in rectifying such problems at Verite's then current published rates.

2.4 **Hosting Services.** If specified in Exhibit A, Verite will perform for Customer the hosting services set forth in Exhibit C, subject to the additional terms and conditions set forth in Exhibit C.

3. LICENSE TO USE SOFTWARE

3.1 **Grant of License.** Subject to the terms and conditions of this Agreement during the term of this Agreement, Verite grants to Customer a nonexclusive, nontransferable, license to access and use the Verite System, solely for the purpose of managing online content.

3.2 **License Restrictions.** Customer has no right to provide access to the Verite System to any third party. Unless expressly set forth in Exhibit A, Customer has no right to manage online content that is

hosted by, concerning the products and services of, or otherwise offered by or on behalf of any third party. Customer may not: (a) modify, disassemble, decompile or reverse engineer the object code of the Verite System nor permit any third party to do so, except to the extent permitted by law notwithstanding this limitation; (b) copy any portion of the Verite System; or (c) unless expressly authorized hereunder, access the Verite System in any manner to provide service bureau, time-sharing or other computer services to third parties.

3.3 **Limited Rights.** Customer's rights to access and use the Verite System will be limited to those expressly granted in this section. Verite reserves all rights and licenses in and to the Verite System not expressly granted to Customer under this Agreement.

3.4 **Ownership of the Verite System.** Verite is and shall remain the sole and exclusive owner of all of the proprietary features and functionality of the Verite System and Intellectual Property Rights in and to the design, architecture, and software implementation of the Verite System.

Customer will not delete or in any manner alter the copyright, trademark, and other proprietary rights notices of Verite and its licensors appearing on the Verite System as delivered to or used by Customer.

3.5 **Intellectual Property.** Except for those licenses expressly granted hereunder, neither party shall gain by virtue of this Agreement any rights of ownership of copyrights, patents, trade secrets, trademarks, or any other intellectual property rights owned by the other. Verite shall solely own all intellectual property rights, title and interest in any ideas, concepts, know how, documentation or techniques that it or its representatives develop or provide under this Agreement. Customer shall retain sole ownership of its proprietary techniques, trade secrets or processes that it has developed. Verite product attribution shall appear on both the front-end and the backend of the application.

4. CUSTOMER OBLIGATIONS

4.1 **Integration; Customer Equipment and Software.** Customer agrees to provide any and all technical information and assistance reasonably required by Verite to implement the Verite System for access and use by Customer. Customer will provide PCs or other terminals equipped with web browser software that supports its employees using the Verite System.

5. Event Data.

5.1 **Data License.** Customer hereby grants a non-exclusive, royalty-free, perpetual, irrevocable fully paid-up license to use, reproduce, display, modify, create derivative works and disclose in any manner the data derived by Verite from Customer's use of the Verite System ("Usage Data") for various purposes of including, but not limited to, operating, maintaining, supporting, enhancing and marketing the Verite System, provided that any Usage Data is used or disclosed only in an aggregate form and does not, directly or indirectly, (i) identify Customer or any party affiliated with Customer, or (ii) identify, or

contain any personally identifying information about, any Customer employee, consultant or any other individual affiliated with Customer.

6. ACCOUNT MANAGERS

6.1 Appointment and Change of Account Managers. Each party shall appoint an Account Manager, as set forth in Exhibit A. The Account Managers shall be responsible for addressing and resolving issues relating to the delivery and use of the Verite System. Either party may change the name of its Account Manager upon written notice to the other party.

7. PAYMENT OBLIGATIONS.

7.1 Payment. Verite will invoice Customer for access to the Verite System and for other services as specified in Exhibit A. If applicable, monthly hosting fees shall be due by the first (1st) day of each month in which services are provided. Invoices are due thirty (30) days from the date of the invoice and are deemed past due if not paid within fifteen (15) days of the due date. Late charges will be added to past due invoices at a rate of 1 ½% per month, or the maximum rate allowed under law, whichever is lower, from the date such payment was due until the date paid.

7.2 Taxes. Customer shall be responsible for all sales taxes, use taxes and any other similar taxes and charges of any kind imposed by any federal, state or local governmental entity on the transactions contemplated by this Agreement, excluding only U.S. taxes based solely upon Verite's income.

7.3 Non-Funding. The parties acknowledge that (a) Customer is a governmental entity that is constitutionally prohibited from incurring non-bonded indebtedness extending beyond Customer's current fiscal year; and (b) funds are not presently available for Customer's performance of this Agreement beyond 30 June 2008. Consequently, notwithstanding anything in this Agreement to the contrary, Customer's obligation for performance of this Agreement beyond that date is contingent upon funds being appropriated for payments due under this Agreement. In the event that no funds or insufficient funds are appropriated and budgeted in a current or any succeeding fiscal year, or in the event there is a reduction in appropriations of Customer, due to insufficient revenue, resulting in insufficient funds for payments due or about to become due under this Agreement, then this Agreement shall create no obligation on Customer as to such fiscal year (or any succeeding fiscal year), but instead shall terminate and become null and void on the first day of the fiscal year for which funds were not budgeted and appropriated, or, in the event of a reduction in appropriations, on the last day before the reduction becomes effective (except as to those portions of payments herein then agreed upon for which funds are appropriated and budgeted). Said termination shall not be construed as a breach of or default under this Agreement and said termination shall be without penalty, additional payments, or other charges to Customer of any kind whatsoever, and no right of action for damages or other relief shall accrue to the benefit of Verite or its successors or assigns as to this Agreement, or any portion thereof, which may so terminate and become null and void.

8. CONFIDENTIAL INFORMATION.

8.1 Confidential Information. "Confidential Information" means any information disclosed previously or in the future by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, which is designated as "Confidential," "Proprietary" or some similar designation. Verite's Confidential Information shall include without limitation information regarding the Verite System. Each party agrees not to use or disclose any Confidential Information of the other party for any purpose except as necessary to effect the intent of the Agreement. Each party agrees that

it shall take appropriate measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other party. Without limiting the foregoing, each party shall take at least those measures that it takes to protect its own confidential information and shall ensure that its employees who have access to Confidential Information of the other party have signed a non-use and non-disclosure agreement in content similar to the provisions hereof, prior to any disclosure of Confidential Information to such employees.

8.2 Exclusions. "Confidential Information" does not include any information that the receiving party can demonstrate is: (1) rightfully known prior to disclosure, (2) rightfully obtained from a third-party authorized to make such a disclosure, (3) independently developed by the receiving party; (4) available to the public without restrictions, (5) approved for disclosure with the prior written approval of the disclosing party or (6) disclosed by court order or as otherwise required by law, provided that the party required to disclose the information provides prompt advance notice to enable the other party to seek a protective order or otherwise prevent such disclosure.

8.3 Term of Confidentiality. Each party will have a duty to protect Confidential Information of the other party for a period of five (5) years from the date of receipt thereof, or until such time as that Confidential Information is no longer confidential pursuant to Section 8.2.

8.4 Injunctive Relief. Each party agrees that money damages would not be a sufficient remedy for any breach of the obligations herein and that the disclosing party shall be entitled to specific injunctive relief as a remedy for any such breach. Such remedy shall not be deemed to be the exclusive remedy for the breach of obligations herein but shall be in addition to all other available legal or equitable remedies.

9. REPRESENTATION AND WARRANTIES.

9.1 Verite Representations and Warranties. Verite represents and warrants that (i) it has the power and authority to enter into this Agreement and perform its obligations hereunder, and such performance will not breach any separate agreement by which Verite is bound, and (ii) it will comply with the laws, rules and regulations that apply to Verite in connection with the conduct of its business and its provision of the Verite System.

9.2 Customer Representations and Warranties. Customer represents and warrants that (i) it has the power and authority to enter into this Agreement and perform its obligations hereunder, and such performance will not breach any separate agreement by which Customer is bound, (ii) it will comply with the laws, rules and regulations that apply to Customer in connection with the conduct of its business and its use of the Verite System, and (iii) it will not utilize (or allow utilization of) the Verite System in any manner prohibited by this Agreement or written Verite policies provided to Customer, or violate or tamper with the security of any Verite computer software or equipment.

9.3 Warranty Disclaimer. THE VERITE SYSTEM IS PROVIDED "AS IS" AND "AS-AVAILABLE," AND SUBJECT TO SECTION 10.1, CUSTOMER'S USE OF THE VERITE SYSTEM IS AT ITS OWN RISK. NEITHER PARTY MAKES, AND BOTH PARTIES DISCLAIM, ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. VERITE DOES NOT WARRANT THAT THE VERITE SYSTEM WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.

10. INDEMNIFICATION.

10.1 Verite Indemnity. Verite will indemnify, defend and hold harmless Customer against losses, liabilities, claims, obligations, costs, expenses (including reasonable attorneys' fees) which result from, arise in connection with or are related in any way to any third party claim based upon (a) any breach or alleged breach by Verite of any of Verite's representations and warranties set forth herein, or (b) an allegation that the Verite System (including any Verite-owned trademarks, service marks, logos or designs used therein) infringes any third party U.S. copyright, trademark or patent and shall pay any liabilities, damages, costs and expenses (including reasonable attorneys' fees) finally awarded therein or paid in settlement. If the Verite System is finally held or believed by Verite to infringe, Verite shall use reasonable efforts to obtain a license under the rights that have been infringed, to modify the Verite System so it is noninfringing or to provide to Customer substitute Verite System that is noninfringing; provided that if in Verite's judgment such options are not commercially reasonable, Verite may terminate the license for the infringing Verite System upon written notice to Customer. Verite shall have no liability for infringement based on modification of the Verite System by any party other than Verite, features or modifications made in accordance with specifications provided by Customer, or content, trademarks or other materials provided by Customer for inclusion in the Verite System. THIS SECTION STATES VERITE'S ENTIRE OBLIGATION WITH RESPECT TO ANY CLAIM FOR INFRINGEMENT OR MISAPPROPRIATION OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

10.2 Customer Indemnity. Customer will defend Verite against losses, liabilities, claims, obligations, costs, expenses (including reasonable attorneys' fees) which result from, arise in connection with or are related in any way to any third party claim based upon (a) any breach or alleged breach by Customer of any of Customer's representations and warranties set forth herein, (b) any misuse of the Verite System by Customer; or (c) an allegation that any content, trademarks, service marks, logos, designs or other materials provided by Customer for inclusion in the Verite System infringes any third party U.S. copyright, trademark or patent that has issued as of the Effective Date; and shall pay any liabilities, damages, costs and expenses (including reasonable attorneys' fees) finally awarded therein or paid in settlement.

Notwithstanding anything in this Agreement to the contrary, (a) the parties acknowledge that Customer is a governmental entity under the "Utah Governmental Immunity Act" (UTAH CODE ANN. § 63-30-1, *et seq.*) (the "Immunity Act"); and (b) Customer does not in any way waive any defenses otherwise available under the Immunity Act nor any limits of liability currently provided by the Immunity Act.

10.3 Conditions. The indemnification obligations in Sections 10.1 and 10.2 above are contingent upon the indemnified party providing the indemnifying party with: (i) prompt written notice of such claim, (ii) control over the defense and settlement of such claim, and (iii) proper and full information and assistance to settle or defend any such claim. The party being indemnified may, at its option and expense, be represented by separate counsel in any such action.

11. TERM AND TERMINATION.

11.1 Term. This Agreement will be effective commencing on the Effective Date, and continuing for the period of time set forth in Exhibit A (the "Initial Term"). Verite will notify Customer at least sixty (60) days prior to the expiration of the Initial Term or any successive terms and will inform Customer of Verite's then-current rates for access and use of the Verite System and other services provided hereunder. This Agreement will automatically renew for successive one-year terms at such rates unless Customer notifies Verite in writing thirty (30) days prior to the end of the then current term that it intends to terminate its use of the Verite System on the expiration date or unless Verite and

Customer agree to other terms and conditions for renewal.

11.2 Termination. This Agreement may be terminated as follows:

(a) If Customer fails to make any payment due hereunder, and fails to cure such breach within ten (10) days after receiving written notice from Verite, then Verite may immediately and without further notice, terminate this Agreement and declare all sums due hereunder, immediately payable;

(b) Except as set forth in subsection 11.2(a) above, if either party materially breaches any term or condition of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of the breach, the non-breaching party may terminate this Agreement on written notice at any time following the end of such thirty (30) day period. If this Agreement is terminated for cause other than for non-payment by Customer, the parties agree that this Agreement shall nevertheless remain in force for an additional period of time of not less than forty-five (45) days nor more than one hundred and eighty (180) days. The parties agree to negotiate reasonably and in good faith in order to agree in writing upon the length of such time period. If the parties are unable to agree, the non-breaching party's decision as to the length of the time period shall control;

(c) This Agreement may be terminated immediately in either party's sole discretion upon notice of appointment of a receiver, or an assignee for the benefit of creditors of the other party, or in the event of any insolvency of the other party, except as may be prohibited by applicable bankruptcy laws.

11.3 Early Termination. At any time during the Initial Term or subsequent renewal terms Customer may terminate this Agreement with forty-five (45) days written notice to Verite. If Customer terminates under this Section 11.3, Customer shall pay an early termination fee equal to 50% of all remaining monthly fees due and to become due to Verite during the then-current term (the "Early Termination Fee"). The Early Termination Fee is due and payable within thirty (30) days of the termination.

11.4 Effect of Termination. Upon termination or expiration of this Agreement, all rights to the Verite System, including but not limited to use and access, will automatically terminate. Customer will discontinue its use of the Verite System and each party will return or destroy any Confidential Information of the other party it may possess. Customer shall pay to Verite all outstanding amounts and fees incurred prior to termination or otherwise owed to Verite within thirty (30) days of the date of termination. The respective rights and obligations under Sections 3.2, 3.4, 3.5, 5.1, 7, 8, 9, 10, 11.4, 12, 13 survive the termination or expiration of this Agreement.

12. LIMITATION OF LIABILITY.

IN NO EVENT WILL VERITE'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE SUM OF FEES PAID OVER THE IMMEDIATELY PRECEDING TWELVE (12) MONTHS BY CUSTOMER FOR THE SERVICES GIVING RISE TO THE LIABILITY.

IN NO EVENT SHALL VERITE, ITS LICENSORS, OR ITS SUPPLIERS HAVE ANY LIABILITY TO CUSTOMER FOR ANY LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY AND WHETHER OR NOT VERITE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

THE PARTIES AGREE THAT THIS SECTION 12 REPRESENTS A REASONABLE ALLOCATION OF RISK.

13. GENERAL.

13.1 Public Announcements. Neither party shall release any press release or other public statement regarding this Agreement without the prior consent of the other party, which shall not be unreasonably withheld. However, Verite is permitted to include Customer on customer lists or references that may be provided to potential customers and other third parties.

13.2 Assignment. Neither party may assign this Agreement or its rights hereunder to any third party without the prior written consent of the other party, which shall not be unreasonably withheld.

13.3 Independent Contractors. The parties are independent contractors. Neither party shall be deemed to be an employee, agent, partner or legal representative of the other for any purpose and neither shall have any right, power or authority to create any obligation or responsibility on behalf of the other.

13.4 Force Majeure. Except with respect to Customer's payment obligations under this Agreement, neither party shall be liable for any loss or damage or be deemed to be in breach of the Agreement to the extent that performance of such party's obligations or attempts to cure any breach under this Agreement are delayed or prevented as a result of any event or circumstance beyond its reasonable control, provided that the other party may terminate this Agreement upon thirty (30) days written notice if the circumstances causing non-performance can reasonably be expected to continue more than three (3) months.

13.5 Choice of Law and Jurisdiction. This Agreement will be governed by the laws of the U.S. and the State of Utah. If a dispute arises concerning this Agreement where the Customer is the plaintiff in such action, the substantive and procedural law of the state of Utah, without reference to rules governing choice of laws, will apply, and the venue shall be laid exclusively in Salt Lake County, Utah, and Utah state and federal courts shall have exclusive jurisdiction over such action. In the event of any such dispute, the prevailing party shall be entitled to recover from the non-prevailing party all attorneys' fees and costs incurred by the prevailing party in connection with such dispute, regardless of whether such dispute results in the filing of a lawsuit.

13.6 Entire Agreement; Amendment. This Agreement and all attached Exhibits (which are hereby incorporated by reference) constitute the entire agreement between the parties concerning the subject matter hereof and supersede all written or oral prior agreements or understandings with respect thereto. This Agreement may not be amended, except by a writing signed by authorized representatives of both parties.

13.7 Severability. In case of any one or more of the provisions of this Agreement should be invalid, illegal or unenforceable, such provision(s) shall be modified, if possible, to the minimum extent necessary to make it valid and enforceable, or if it cannot be so modified, then severed, and the remaining provisions contained herein shall not in any way be affected or impaired.

13.8 Waiver. Neither party's failure to enforce strict performance of any provision of this Agreement will constitute a waiver of a right to subsequently enforce such a provision. No modification, extension or waiver of this Agreement shall be valid unless made in writing and signed by an authorized representative of the party to be charged. No written waiver shall constitute, or be construed as, a waiver of any other obligation or condition of this Agreement.

13.9 Notices. All legal notices between the parties shall be in writing and shall be sent by certified or registered mail or commercial overnight delivery service, with provisions for a receipt, to the address of the other party listed above (or to such other address as a party may furnish to the other in writing).

13.10 Attachments. The following documents are attached hereto as Exhibits, and are incorporated by reference in their entirety:

Exhibit A (System Description and Fees)

Exhibit B (Support and Service Levels)

Exhibit C (Hosting Services Agreement)

Exhibit D (Consulting Services Agreement)

Accepted and Agreed:

Cottonwood Heights

By: _____

Print Name: _____

Title: _____

Date: _____

Cottonwood Heights

By: _____

Print Name: _____

Title: _____

Date: _____

Verite, Inc.

By: _____

Print Name: _____

Title: _____

EXHIBIT A
System Description and Fees

I. System Description:

A. Verite System Description:

The Verite System is Verite's Internet-based system for online content management and is also known as the Verite Content System.

VMS includes the following:

- Media Management
- Search Engine
- Dynamic Navigational Design

B. Issue Definition:

For purposes of the Agreement, the term "Issue" shall mean any maintenance request by a Company employee or Company contractor not relating to an open project. These types of requests may pertain to copy changes on the system, system malfunctions, or research into specific candidate concerns. Issues may be deemed upgrade requests and outside the scope of the maintenance contract by the Verite team. If an Issue is deemed an upgrade request, the formal proposal process will be followed.

C. Hosting Services Provided?

Yes.

II. Initial Term

The initial term of this Agreement shall be from June 1, 2008 – May 31, 2009.

III. Additional Services To be Provided:

A. Hosting Services:

Verite will provide the following hosting services for Customer during the term of the Agreement:

See Exhibit C

B. Training Services:

Any additional training requests will be billed at \$200/hour.

IV. Account Managers

For Verite: Alan Walker
Phone: 801.553.1101
e-mail: awalker@verite.com

For Customer: Scott Bracken
Phone: 801.545.4154
e-mail: sbracken@cottonwoodheightscity.com

V. Fees:

A. Yearly Licensing Fee

\$2,500 per eTool® (VMS®) Total: \$2,500.00

B. Hosting Services Fees

- Monthly Hosting Fee: \$200.00

C. Maintenance and Support Fees

- Issues will be billed at \$75 per Issue. Client must approve any issues that will be charged above \$75.

D. Additional Service Fees

- Training Services: \$ 200 per hour.

EXHIBIT B
Support and Service Levels

I. Support. In consideration of the fees paid by Customer, in addition to the license to access and use the Verite System, Verite will provide Customer with the following support services:

Technical Support. Verite will use its reasonable efforts to assist Customer with technical issues relating to the Verite System. Support services are charged at the hourly rate set forth in Exhibit A. Customer may telephone Verite's offices for support during Verite's regular business hours, 8:30 a.m. to 5:30 p.m. Mountain Time on weekdays (Monday – Friday), except holidays. After-hours, weekend and holiday support is available via digital beeper. Verite will respond to support telephone calls or e-mail contacts based on the following criteria: (a) the order that such calls or e-mail are received; and (b) the relative importance of such calls or e-mail as reasonably determined by Verite. Verite shall make reasonable, good faith efforts to respond technical support requests and to correct errors within the following time periods:

Severity Levels:

Severity 1 ("Critical") means an error in the Verite System that causes the Verite System to be inoperable or unusable.

Severity 2 ("Important") means an error in the Verite System causing a significant loss of Verite System functionality.

Severity 3 ("Minor") means all other errors.

Upon receiving notice of an error, Verite will give Customer written acknowledgement of receipt of such notice. Verite will use commercially reasonable efforts to make such acknowledgement as follows:

Severity 1 or 2 – within 1/2 hour during regular business hours and within two (2) hours during off-business hours (for telephone/beeper requests only).

Severity 3 – within two (2) business days.

Verite will use its reasonable efforts and, with respect to Severity 1 and 2 errors, diligent efforts to provide a temporary or permanent resolution for the error within the following time frames:

Severity 1: within twenty-four (24) hours of acknowledging receipt of the error.

Severity 2: within two (2) business days of acknowledging receipt of the error.

Severity 3: at Verite's discretion, within ten (10) days of acknowledging the receipt of the error or in a future release of the Verite System.

Customer agrees to cooperate with Verite in providing documentation and information as Verite may reasonably request, so that Verite can verify and reproduce the reported error.

Uptime.

Verite will use commercially reasonable efforts to make the Verite System available, regardless of hosting arrangement, seven (7) days per week, twenty-four (24) hours per day with a ninety-eight percent (98%) reliability to the Verite System, excluding downtime (i) scheduled in advance for maintenance on a periodic basis, or (ii) due to faults caused by Customer of Customer's system, or (iii) due to other causes outside of the reasonable control of Verite, including without limitation malfunction or cessation of Internet services by any third party network or ISP.

EXHIBIT C
Hosting Services Terms and Conditions

This Exhibit C, Hosting Services Terms and Conditions, is an integral part of and is subject to the terms and conditions of the Software License and Services Agreement dated June 1, 2008 (the "Agreement") between Verite, Inc. ("Verite") and Company, Inc. ("Customer").

1. DEFINITIONS.

"Hosting Services" means the following services:

- A. Hosting of the Verite System, licensed pursuant to the Agreement, on the website on Verite server(s), and with bandwidth and hard drive space as follows:

Bandwidth and Space

Bandwidth per month: 20 Gb

Hard Drive Space: 10 GB

- B. Systems administration tasks performed by Verité each month to include the following:

- Daily Backup with a two week tape reserve of all system data
- Maintenance of operating system, database, and application Server
- Weekly security patches and system updates
- 24/7 load and performance monitoring
- Database integrity verification (i.e. who has access to what data within the system)

Any terms used herein that are not defined above shall have the meaning as set forth in the Agreement.

2. SERVICES.

2.1. **Performance of Services.** Subject to the terms and conditions of the Agreement, including, without limitation, Customer's payment of fees for the Hosting Services set forth in the Agreement, Verite will diligently perform the Hosting Services during the term of the Agreement.

2.2. **Contacts.** The parties' respective contacts are designated as Account Managers in the Agreement.

3. OWNERSHIP.

3.1. **Verite Ownership.** Verite will own all worldwide right, title and interest in and to any software or other technology developed by Verite while performing the Hosting Services and in any software tools, specifications, ideas, concepts, know-how, processes, and techniques used by Verite in performing the Hosting Services (collectively "Verite Technology"), including all worldwide Intellectual Property Rights therein. Nothing in this Hosting Services Agreement or otherwise shall be deemed to prohibit or limit in any way Verite's right to use the Verite Technology, in whole or in part, to develop Verite products or to develop software for other Verite customers. For the purpose of this Hosting Services Agreement, "Residual Information" means information in non-tangible form, excluding Customer Confidential Information, which may be retained by persons within Verite's organization who have participated in the Hosting Services. Verite will have no obligation to limit or restrict, in any way, the assignment or reassignment of any such persons. Nothing in this Section 3 will be deemed to grant to Verite any rights or licenses in or to Customer's Confidential Information or intellectual property, including but not limited to, all copyrights, trade secrets, patents rights, trademarks and other proprietary information. Customer will not delete or in any manner alter the copyright, trademark and other proprietary rights notices of Verite and its licensors.

4. WARRANTY DISCLAIMER.

4.1. EXCEPT AS EXPRESSLY PROVIDED IN THE STATEMENT OF WORK, VERITE DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

5. TERM AND TERMINATION.

5.1. **Term.** This Hosting Services Agreement will commence as of the Effective Date and will remain in effect during the term of the Agreement.

5.2. Termination. Each party will have the right to terminate this Hosting Services Agreement under the terms of Section 11 of the Agreement. A breach of this Hosting Services Agreement shall constitute a breach under the Agreement.

5.3. Effect of Termination. Upon any termination of this Hosting Services Agreement, Customer will be responsible for and will pay Verite for all Hosting Services fees and expenses incurred up to the effective date of such termination under the terms specified in Exhibit A to the Agreement.

5.4. Survival. The rights and obligations of the parties contained in Sections 3, 4, 5.4 will survive any termination of this Agreement.